LPA/822/99.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 822 of 1999

in

SPECIAL CIVIL APPLICATIONNo 9424 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P K SHAH

Versus

GUJARAT INDUSTRIAL CO. OP. BANK LIMITED

Appearance:

MR NR SHAHANI for Appellant

MR DIPAK R DAVE for Respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

MR.JUSTICE J.M.PANCHAL

Date of decision: 01/08/2000

C.A.V.JUDGMENT : (Per : Panchal, J.)

By means of filing this appeal under Clause 15 of the Letters Patent, the appellant-workman has challenged judgment dated March 9, 1999 rendered by the learned Single Judge, in Special Civil Application No. 9424/98, by which award dated August 19, 1998 passed by the Labour Court, Ahmedabad directing the respondent to reinstate the appellant in service with backwages, is set aside on the ground that the reference to the Labour Court by the State Government was incompetent.

2. The respondent is a Co.operative Society registered under the Gujarat Co.operative Societies Act, 1961. It transacts the business of banking and is a banking company within the meaning of Section 5(c) of the Banking Regulations Act, 1949 and section 2(bb) of the Industrial Disputes Act, 1947. The respondent has its Branches all over the State of Gujarat and also the Regional Branch at Dadaranagar Haveli (Selvas), which is a Union Territory.

3. The appellant was working as a Clerk with the respondent-Bank. He was suspended from service on October 16, 1995 for the misconduct of subverting the discipline of the Bank. Ultimately, after holding inquiry he was dismissed from service by an order dated August 9, 1997. He raised an industrial dispute and the State Government acting as an appropriate Government referred the dispute regarding reinstatement of the appellant in service, for adjudication to Presiding Officer, Labour Court, Ahmedabad. In the written statement filed by the respondent, an objection was raised to the effect that the State Government had no jurisdiction to refer industrial dispute between the Bank and its employees in view of the provisions of the Industrial Disputes (Banking and Insurance Companies) Act, 1949 and, therefore, the reference should be dismissed. The Labour Court raised necessary issues for determination and held that as 2(p) settlement dated September 16, 1999 was approved by the Labour Commissioner and as the respondent had prolonged the proceedings pending before Conciliation Officer and had not approached the competent authority with clean hands, the reference was not liable to be dismissed on the ground that the State Government had no jurisdiction to refer the dispute to the Labour Court. The Labour Court

on merits found that the misconduct alleged against the appellant was not proved. Therefore, the Labour Court by award dated August 19, 1998 directed the respondent to reinstate the appellant in service with backwages.That award was challenged by the respondent before the High Court in Special Civil Application No. 9424/98. As observed earlier, the learned Single Judge has by the impugned judgment set aside the award of the Labour Court on the ground that the reference of the dispute to the Labour Court by the State Government was incompetent, giving rise to the present appeal.

4. Mr. N.R.Sahani, learned counsel for the appellant submitted that the Labour Court, Ahmedabad, which is competent to receive reference from the State Government as well as Central Government and is set-up under the Industrial Disputes Act, 1947, has adjudicated the dispute in favour of the appellant and, therefore, the award passed by the Labour Court should not have been set aside on the ground that the reference of the dispute by the State Government was without jurisdiction. It was pleaded that the respondent-Bank is having only one Branch in Union Territory of Dadaranagar Haveli and, therefore, the State Government was competent to make reference of dispute for its adjudication to the Labour Court. It was claimed that a proposal to divide the respondent-Bank in three separate divisions is pending and if the proposal goes through, Central Government would not be competent to make reference of dispute to the Labour Court and, therefore, in such circumstances the award should not have been set aside by the learned Single Judge. An additional ground, which was neither raised before the learned Single Judge, nor raised in the memorandum of appeal, was raised by the learned counsel for the appellant to the effect that as banking licence is not obtained by the respondent, it could not be regarded as 'banking company' and, therefore, reference of dispute made by the State Government was valid. Lastly it was contended that during the pendency of petition before the learned Single Judge, the respondent had not complied with the provisions of section 17-B of the Industrial Disputes Act, 1947 and, therefore, appropriate direction should be given to the respondent to pay wages to the appellant as provided by section 17-B of the said Act. In support of his submissions, learned counsel placed reliance on the decision rendered in Indian Oil Corporation Ltd. v. Mahendrabhai R.Patel & Anr., 1987(1) GLR 154.

5. Mr. D.R.Dave, learned counsel for the respondent urged that the respondent has also a regional Branch at

Dadaranagar haveli, which is a Union Territory and as it fulfills the requirements of 'banking company' as defined in the Industrial Disputes Act, the State Government was precluded from referring the dispute for adjudication to the Labour Court and the reference at the instance of only Central Government was competent in view of the provisions of section 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949. The learned counsel emphasised that the award based on an incompetent reference is a nullity and, therefore, the learned Single Judge was justified in setting aside the award which was passed by the Labour Court in favour of the appellant. It was pointed out by the learned counsel for the respondent-bank that an application dated June 17, 1970 was submitted by the respondent to obtain banking licence which is granted by the Reserve Bank by an order dated October 13, 1999 and as the respondent was formed as a State Industrial Co.operative Bank on amalgamation of two co.operative banks, the prohibitioin contained in Clause (b) of sub-section (1) of Section 56 of the Banking Regulations Act,1949,is not applicable in view of the provisions of section 56(o)(2) Proviso (ii) of the said Act and, therefore, State Government was not competent to refer the dispute for its adjudication to the Labour Court.

6. We have considered the submissions advanced at the Bar and the documents forming part of the petition. In order to resolve the dispute raised in the appeal, it would be relevant to notice certain provisions of the Industrial Disputes Act, 1947 and other relevant statutes. Section 2(a) of the Industrial Disputes Act, 1947 defines 'appropriate Government' and reads as under:-

"2(a): 'appropriate Government' means;-

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this by the Central Government or in relation to an Industrial Dispute concerning a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948), or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the

Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B respectively of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the "Indian Airlines" and "Air India" Corporations established under Section 3 of the Air Corporations Act, 1953 (27 of 1953), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Commission established under section 3 of the Oil and Natural Gas Commission Act, 1959 (43 of 1959) or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the International Airports Authority of India constituted under section 3 of the International Airports Authority of India Act, 1971 (43 of 1971), or a Regional Rural Bank established under section 3 of the Regional Rural Bank Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India, or the Banking Service Commission established, under section 3 of the Banking Service Commission Act, 1975 or a banking or an insurance company, a mine, an oil field a Cantonment Board, or a major port, the Central Government, and

(ii) in relation to any other Industrial Dispute, the State Government;"

Section 5(1)(C) of the Banking Regulations Act, 1949 also defines the phrase "Banking Company" to mean any Company which transacts the business of banking in India. A bare reading of the above quoted provisions makes it evident that a bank which transacts business of banking is a 'banking company' within the meaning of

section 2(bb) of the Industrial Disputes Act, 1947 provided it has branches or other establishment in more than one State. As noted earlier, the respondent has its branches all over the State of Gujarat and also a regional Branch at Dadaranagar Haveli, which is a Union Territory. A Division Bench of this High Court had occasion to consider the question whether the respondent which is having one of its regional branches at Dadaranagar Haveli (Selvas), is governed by the Bombay Industrial Relations Act, 1946. The Division Bench in Special Civil Application No. 249/82 decided on April 22, 1990 noted that the proviso to sub-section (3) of Section 2 of the Bombay Industrial Relation Act provides that the said Act will not apply to any Banking Company as defined in Section 6 of the Banking Companies Act of 1949 having branches or other establishments in more than one State. The Division Bench noted the admitted fact that one of regional branches of the respondent is located at Dadaranagar Haveli, which is a Union Territory and proceeded to consider the contention raised that Dadaranagar Haveli being Union Territory should not be considered to be a 'State'. The said contention was negatived by the Division Bench holding that Dadaranagar Haveli is a 'State' within the meaning of Proviso to Section 2(3) of the Bombay Industrial Relations Act read with provisions of section 3(58) of the General Clauses Act, 1897. Thus, the question whether the respondent is a Banking Company having its branches in more than one State, is no more res integra and we hold that the respondent is a Banking Company having its branches in more than one State. Section 2(aa) of the Industrial Disputes Act, inter-alia, provides that in relation to any industrial disputes concerning any industry carried on by a banking or insurance company, the Central Government is the appropriate Government. As the dispute between the appellant and the respondent is a dispute between a banking company and its employee, reference of dispute could have been made only by the Central Government in view of provisions of Section 10 of the Industrial Disputes Act, 1947. At this stage, it would be relevant to notice the provisions of section 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949. Section 4 of the said Act reads as follows :-

"4. Prohibition of reference by State Government of certain industrial disputes for adjudication, inquiry or settlement :

Notwithstanding anything contained in any other law, it shall not be competent for a State Government or any officer or authority

> subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such disputes, to any tribunal or other authority for adjudication, inquiry or settlement."

A bare reading of the above-referred to provision makes it manifest that it is not competent for the State Government or any officer or authority subordinate to State Government, to refer an industrial dispute concerning any banking company or any matter relating to such dispute, to any Tribunal or other authority for adjudication, inquiry or settlement, notwithstanding anything contained in any other law. The prohibition mentioned in section 4 of the said Act is absolute and does not admit of any exception. A conjoint reading of Sections 2(aa), 2(bb) and 10 of the Industrial Disputes Act, 1947 read with section 5(1)(C) of the Banking Regulation Act, 1949 and section 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949 makes it abundantly clear that the dispute between the appellant and the respondent could not have been referred for its adjudication to the Labour Court by the State Government and the reference itself was void ab-initio. It is needless to point out that the award based on an incompetent reference is a nullity and, therefore, in our view, the learned Single Judge was justified in setting aside the same.

The contention that no prejudice having been caused to the respondent, award rendered in favour of the respondent should not have been set aside by the learned Single Judge, has no merits. The scheme as envisaged under the Industrial Disputes Act is such that adjudication of a dispute referred by the Central Government can be made only by the Industrial Tribunal and not by any other forum. Thus, the forum which gets jurisdiction to adjudicate the dispute also changes when the reference of the same is made by the Central Government. The prejudice is inherent in a reference which is made by an incompetent authority and, therefore, it is difficult to uphold award rendered by the Labour Court in favour of the appalent on the ground that no prejudice is caused to the respondent.

The argument that the respondent has not obtained banking licence under section 22 of the Banking Regulation Act, 1949 and, therefore, cannot be regarded as 'banking company', has also no substance. The relevant documents produced by the learned counsel for the respondent - bank indicate that the respondent had

made an application dated June 17, 1970 for obtaining banking licence and the same was granted by the Reserve Bank of India vide order dated October 13,1999. It is further to be noted that Saurashtra Small Industries Co.operative Bank Ltd. Rajkot, which is registered under the Co.operative Societies Act as applicable to the Saurashtra State and the Southern Gujarat Co.operative Bank Ltd. Surat registered under the Bombay Co.operative Societies Act, had decided to amalgamate themselves and form the State Industrial Co.operative Bank. As a result of the said decision, the above-referred to two Co.operative Banks were amalgamated and the Gujarat Industrial Co.operative Bank Ltd., which is respondent in the appeal was formed. This is quite evident from the order dated May 21, 1970 passed by the Registrar, Co.operative Societies, Gujarat State, Ahmedabad under section 17 of the Gujarat Co.operative Societies Act, 1961. Section 56 of the Banking Regulation Act, 1949 provides that the provisions of this Act, as in force for the time being, shall apply to, or in relation to Co.operative Societies as they apply to, or in relation to Banking Companies subject to modification indicated therein. The provisions of section 56(o)(2) proviso (ii) stipulate that a co.operative bank which has come into existence as a result of the amalgamation of two or more co.operative societies carrying on banking business is not precluded from carrying on banking business until it is granted a licence or is by a notice in writing notified by the Reserve Bank of India that licence cannot be granted to it. Therefore, till the grant of licence, the respondent was entitled to carry on banking business and was a banking company within the provisions of The Banking Regulation Act, 1949. In view of this position, it is difficult to agree with the submission made by the learned Counsel for the appellant that as the respondent had no valid banking licence, it should not be regarded as 'banking company, and reference at the instance of the State Government should be treated as competent.

The contention that in view of section 17-B of the Industrial Disputes Act, 1947, the respondent should be directed to pay wages for the period during which the petition was pending in the High Court, cannot be accepted, as the reference of the dispute by the State Government is found to be totally without jurisdiction. Moreover, though Civil Application claiming wages in terms of section 17-B of the Industrial Disputes Act, 1947 was filed, but it appears that no orders were obtained on the said application at the relevant time. Having regard to the facts of the case, we are of the opinion that in view of the decision of the learned

Single Judge,which we are inclined to uphold in this appeal, now the respondent cannot be called upon to pay wages for the interregnum period to the appellant under section 17-B of the Act. As we find no substance in the appeal, the appeal is liable to be dismissed. However, it is clarified that if any dispute is raised by the appellant, the same shall be taken-up in conciliation without any avoidable delay and shall be decided in accordance with law.

For the foregoing reasons, the appeal fails and is dismissed with no orders as to costs.

(D.M.Dharmadhikari,C.J.)

(J.M.Panchal,J.)

At this stage, learned counsel for the appellant prays to stay the operation of the judgment delivered by us in this appeal to approach higher forum. We have upheld the judgment of the learned Single Judge after considering the provisions of relevant statute. Having regard to the facts of the case, we are of the opinion that prayer to stay the operation of the judgment delivered by us does not deserve to be granted. Hence, the said prayer is rejected.

(D.M.Dharmadhikari,C.J.)

1.8.2000 (J.M.Panchal, J.)

(patel)